

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tahreem Khan	Team: Squad #11	CCRB Case #: 202100330	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/17/2021 2:30 AM	Location of Incident: Wyona Street and Pitkin Avenue	18 Mo. SOL 7/17/2022	Precinct: 75		
Date/Time CV Reported Sun, 01/17/2021 2:49 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 01/17/2021 2:49 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Neil Narayan	19284	966239	075 PCT
2. POM Anthony Varrone	15385	961405	075 PCT
3. SGT Daniel Berardi	00729	948658	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Anthony Varrone	Abuse: Police Officer Anthony Varrone stopped § 87(2)(b)	
B . PO Neil Narayan	Abuse: Police Officer Neil Narayan stopped § 87(2)(b)	
C . SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi stopped § 87(2)(b)	
D . POM Anthony Varrone	Force: Police Officer Anthony Varrone used physical force against § 87(2)(b)	
E . PO Neil Narayan	Force: Police Officer Neil Narayan used physical force against § 87(2)(b)	
F . POM Anthony Varrone	Abuse: Police Officer Anthony Varrone frisked § 87(2)(b)	
G . POM Anthony Varrone	Abuse: Police Officer Anthony Varrone searched § 87(2)(b)	
H . POM Anthony Varrone	Abuse: Police Officer Anthony Varrone failed to explain to § 87(2)(b) the reason for a law enforcement activity.	
I . PO Neil Narayan	Abuse: Police Officer Neil Narayan failed to explain to § 87(2)(b) the reason for a law enforcement activity.	
J . SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi failed to explain to § 87(2)(b) the reason for a law enforcement activity.	
K . SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi failed to provide § 87(2)(b) with a business card.	
L . POM Anthony Varrone	Abuse: Police Officer Anthony Varrone failed to provide § 87(2)(b) with a business card.	
M . PO Neil Narayan	Abuse: Police Officer Neil Narayan failed to provide § 87(2)(b) with a business card.	

Case Summary

On January 17, 2021, § 87(2)(b) filed this complaint on-line with the CCRB.

On January 17, 2021, at approximately 2:30 a.m. in the vicinity of Wyona Street and Pitkin Avenue in Brooklyn, § 87(2)(b) was walking from his friend's home when Sergeant Daniel Berardi, Police Officer Anthony Varrone, and Police Officer Neil Narayan, all of the 75th Precinct, exited their unmarked vehicle. One of the officers told § 87(2)(b) "Hey! You! Stop" (**Allegations A-C: Abuse of Authority** – § 87(2)(g) PO Varrone grabbed § 87(2)(b) right bicep area while PO Narayan grabbed § 87(2)(b) left bicep area from the underside, closer to his armpit, and positioned § 87(2)(b) arms so that they were bent at the elbow, palms facing up; PO Varrone then let § 87(2)(b) right arm go and PO Narayan aggressively grabbed § 87(2)(b) right arm by the elbow and raised it even higher than it was (**Allegations D and E: Force – Physical Force**, § 87(2)(g) PO Varrone then frisked § 87(2)(b) by patting down of his pockets, his underarms, and between his legs and then went into § 87(2)(b) pockets, took out the pink magnifying glass that was in § 87(2)(b) left jacket pocket, and later placed it back into § 87(2)(b) pocket (**Allegation F: Abuse of Authority – Frisk; Allegation G: Abuse of Authority – Search**, § 87(2)(g) After PO Narayan let § 87(2)(b) go and the officers were walking away, Sgt. Berardi asked § 87(2)(b) "Do you have any information?" § 87(2)(b) responded that he would be reporting this incident. PO Varrone, PO Narayan, and Sgt. Berardi did not provide § 87(2)(b) with an explanation of why they stopped him (**Allegations H-J: Abuse of Authority – Other**, § 87(2)(g) All three officers left without providing § 87(2)(b) with business cards (**Allegations K-M: Abuse of Authority – Failure to provide business cards**, § 87(2)(g)

On February 9, 2021, NYPD Legal Bureau provided three body-worn camera videos from Sgt. Berardi, PO Varrone, and PO Narayan.

TARU footage was received at CCRB on May 21, 2021; however, the footage did not capture this incident.

§ 87(2)(b) was not issued a summons, nor was he arrested during this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Anthony Varrone stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Neil Narayan stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Daniel Berardi stopped § 87(2)(b)

PO Varrone's BWC (**Board Review 7**) captures Allegation A. The video is approximately 1 minute and 31 seconds long. Starting at the 00:55 mark on the media player, PO Varrone stops § 87(2)(b) who is dressed in a black jacket with a tan fur trim. The audio starts at the 59 second mark. PO Varrone stands in front of § 87(2)(b) restricting his movement. § 87(2)(b) asks PO Varrone if he has probable cause to be touching him. PO Varrone states, "yeah I do." § 87(2)(b) asks what that probable cause is. PO Varrone then touches § 87(2)(b) left arm and moves it back, which moves his hand out of his pocket. § 87(2)(b) stands with his arms up and bent at the elbow. At the 01:07 mark, PO Varrone takes a pink magnifying glass out of § 87(2)(b) jacket pocket. It is not seen how PO Varrone takes the magnifying glass out.

PO Narayan's BWC (**Board Review 8**) captures Allegation B. The video is approximately 1 minute and 27 seconds long. Starting at the 00:54 mark on the media player, PO Narayan and PO Varrone stop § 87(2)(b) who has his hands raised, by standing in front of him. At 00:59, PO Varrone removed a pink magnifying glass from § 87(2)(b) person.

PO Berardi's BWC (**Board Review 9**) is approximately 1 minute and 18 seconds long. Starting at the 00:47 mark on the media player, PO Varrone and PO Narayan already have § 87(2)(b) stopped and stand in front of § 87(2)(b) on either side of him. § 87(2)(b) has his hands up. The audio starts at the 59 second mark. § 87(2)(b) tells the officers to "You want to open my jacket up? Open my jacket up. You got that recorded? No probable cause. Why are you touching me? Don't touch me bro." Sgt. Berardi tells § 87(2)(b) that everything is being recorded.

On January 17, 2021, at approximately 2:30 a.m., § 87(2)(b) (**Board Review 1**) was walking on the street (not the sidewalk) in the vicinity of § 87(2)(b) in Brooklyn. On this day, § 87(2)(b) wore a black sweatsuit, a black jacket with a brown fur trim, black cloth mask, black Crocs, and a baseball cap. As it was cold outside, § 87(2)(b) walked with his hood up. § 87(2)(b) had two pockets in the front of his jacket. His left pocket contained a pink magnifying glass, and his right pocket contained his keys. § 87(2)(b) sweatpants had two pockets as well; he had only his phone in the right pocket. § 87(2)(b) carried no other items in any of his pockets. § 87(2)(b) was approached by a gray or blue unmarked Ford sedan. The male in the driver's seat had the window rolled down fully and yelled out, "Hey! Yo!" § 87(2)(b) ignored this comment and continued walking. The individual driving the vehicle stopped the vehicle behind § 87(2)(b) three uniformed police officers stepped out, and one of the officers told § 87(2)(b) "Hey! You! Stop!" § 87(2)(b) complied and even stepped towards the officers. He asked PO Varrone, PO Narayan, and Sgt. Berardi if they had probable cause. One of the three officers said "yes."

PO Varrone (**Board Review 3**) stated that he, PO Narayan, and Sgt. Berardi were patrolling and tasked with the removal of illegal guns from the streets. In the area, there had been a constant condition of violence. PO Varrone was driving was driving westbound. PO Varrone made eye contact with § 87(2)(b) who was traveling northbound at the corner of Pitkin Street and Wyona Avenue and looked back at PO Varrone. § 87(2)(b) appeared to have something weighing down the front of his jacket. He then adjusted his jacket and waistband by moving both items side to side. PO Varrone saw a pink handle sticking out of § 87(2)(b) jacket pocket, which looked like a handle of a gun. PO Varrone could not recall if § 87(2)(b) had any visible bulges on his person. Combined with § 87(2)(b) making eye contact with PO Varrone, him having an item weighing down his jacket, and adjusting his waist band, PO Varrone believed that § 87(2)(b) reaction indicated to PO Varrone that § 87(2)(b) could have been concealing an illegal weapon. PO Varrone was unable to provide dimensions of the object he saw sticking out of § 87(2)(b) pocket. PO Varrone noted that based on his training and experience, he believed that § 87(2)(b) may have had a firearm on him. PO Varrone has participated in approximately 40 arrests involving gun seizure, which are part of his experience as a police officer. PO Varrone did not recall if he had any conversation with the other officers regarding his observations of § 87(2)(b) nor did he recall how long he observed § 87(2)(b) prior to approaching him. Both PO Varrone and PO Narayan exited the vehicle and approached § 87(2)(b) PO Varrone did not recall if he made any statements or issued any commands to § 87(2)(b)

PO Narayan (**Board Review 4**) testified that he and PO Varrone observed § 87(2)(b) walking along Pitkin Avenue and Wyona Street. PO Narayan could not recall what, if any, conversation happened in the car regarding § 87(2)(b) at that time. § 87(2)(b) had a bulge in his front jacket pocket area, but as they were in motion, they could not determine the shape or size of the bulge. PO Varrone made a U-turn on Pitkin Avenue to get a second look; § 87(2)(b) "seem[ed] to quickly adjust [the object creating the bulge]." § 87(2)(b) appeared to adjust the item creating the bulge by quickly touching the front area of his jacket where the bulge was. PO Narayan could not recall how long the officers observed § 87(2)(b) prior to making the U-turn. PO Varrone drove the vehicle closer to § 87(2)(b) PO Narayan and the other officers observed a handle sticking out of his jacket pocket. Based on his training and experience, PO Narayan and the other officers believed that the handle could have resembled that of a firearm. PO Varrone and PO Narayan exited their vehicle to determine what item was creating the bulge. As PO Narayan and PO Varrone approached § 87(2)(b) on foot, § 87(2)(b) was being combative, confrontational with his language, and cursing at the officers. § 87(2)(b) was speaking in a "high tone." PO Narayan could not recall what, in any, commands he or PO Varrone made or issued while they stopped § 87(2)(b)

Sgt. Berardi (**Board Review 5**) stated that he, PO Varrone, and PO Narayan were on routine patrol and either assigned to Response Auto or Public Safety, the duties of which were to try to combat violent crime and address conditions within the confines of the precinct. Sgt. Berardi did not recall if there were any conditions in the neighborhood on the date of incident. § 87(2)(b)

who had been walking on the side of the street closest to the driver's side of the patrol vehicle, was observed with a bulge in his jacket, with something sticking out of the bulge. The bulge, which he saw as the vehicle passed by § 87(2)(b) looked like "possibly a firearm." He described its shape as the handle to a firearm sticking out of § 87(2)(b) jacket. Sgt. Berardi did not recall how much the object was sticking out from § 87(2)(b) jacket pocket but noted that it was enough to resemble the handle of a firearm. Sgt. Berardi was not able to say what kind of firearm this object resembled the handle of, and he did not recall any other details about the object. Sgt. Berardi did not recall who had initially noticed § 87(2)(b) or whether there was a conversation about him, although he stated that there might have been one. Approximately 20 or 30 seconds after § 87(2)(b) was observed, PO Varrone and PO Narayan exited the vehicle from the driver's side and approached him. As the officers were approaching § 87(2)(b) Sgt. Berardi was exiting the patrol vehicle from the passenger side. By the time Sgt. Berardi got to the sidewalk closest to the driver's side of the patrol vehicle, § 87(2)(b) had already been stopped.

A Stop, Question and Frisk Report that was filed by PO Narayan regarding this incident (**Board Review 12**) notes that factors that led to the stop were the concealing or possession of a weapon. The narrative notes that an individual § 87(2)(b) was observed walking with an object, resembling the handle of a firearm, was sticking out of his jacket pocket. § 87(2)(b) was stopped and frisked. The handle observed was that of a magnifying glass.

Where a police officer entertains a reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor, the Criminal Procedure Law authorizes a forcible stop and detention of that person People v. DeBour 40 N.Y. 2d 210 (1976) (**Board Review 10**).

Behavior which is susceptible of innocent as well as guilty interpretation cannot constitute probable cause and "innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand," as noted in People v. Miller, 121 A.D.2d 335 (**Board Review 11**).

§ 87(2)(b) was walking home, dressed in all black, at 2:30 a.m. He had a pink magnifying glass in his front left jacket pocket. PO Varrone stated that he was driving an unmarked vehicle westbound when he made eye contact with § 87(2)(b) who was traveling northbound at the corner of Pitkin Street and Wyona Avenue, when PO Varrone saw something weighing down the front of § 87(2)(b) pocket. All three officers noted that they saw a handle—possibly resembling an illegal firearm—sticking out of § 87(2)(b) pocket. PO Varrone and PO Narayan approached § 87(2)(b) first and stood in front of him, as seen on BWC. § 87(2)(b) asked PO Varrone if he had probable cause to be stopping him, and PO Varrone stated that he did. He then proceeded to take § 87(2)(b) hands out of his pockets by moving his arms back. This incident took place at night when it was dark outside. Further, § 87(2)(b) was dressed in all black, making it difficult to see any bulges on his person. The officers indicated that § 87(2)(b) adjusted his jacket where the object was, indicating that he may be in possession of a firearm. § 87(2)(g)

When the officers did see a handle of some sort sticking partially out of § 87(2)(b) pocket, none of the officers could articulate the dimensions of said handle, except that it looked like a firearm. § 87(2)(g)

Allegation (D) Force: Police Officer Anthony Varrone used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Neil Narayan used physical force against § 87(2)(b)

PO Varrone's BWC (**Board Review 7**) is approximately 1 minute and 31 seconds long. The audio starts at the 59 second mark. § 87(2)(b) asks PO Varrone if he has probable cause to be touching him. PO Varrone states, "yeah I do." § 87(2)(b) asks what that probable cause is. PO

Varrone then touches § 87(2)(b) left arm and moves it back, which moves his hand out of his pocket.

PO Narayan's BWC (**Board Review 8**) is approximately 1 minute and 27 seconds long. At the 00:59 timestamp on the media player, PO Varrone removed a pink magnifying glass from § 87(2)(b) person. § 87(2)(b) tells the officers that they have no probable cause. He tells the officers not to touch him several times. At 01:15, PO Narayan hold's § 87(2)(b) arm, that is already bent at the elbow at a right angle. PO Narayan hold's § 87(2)(b) forearm. § 87(2)(b) again says, "Don't touch me bro," and then tells the officers that what they are doing is illegal.

PO Berardi's BWC (**Board Review 9**) is 1 minute and 18 seconds long. The audio starts at the 59 second mark. § 87(2)(b) tells the officers to "You want to open my jacket up? Open my jacket up. You got that recorded? No probable cause. Why are you touching me? Don't touch me bro." As § 87(2)(b) points at PO Narayan when he is asking if PO Narayan he was recording, PO Narayan held § 87(2)(b) forearm and moved his hand back up, so his elbow was at a right angle till the 01:10 mark. Sgt. Berardi tells § 87(2)(b) that everything is being recorded.

After the officers stopped § 87(2)(b) (**Board Review 1**) without making any other statements, PO Varrone grabbed § 87(2)(b) right bicep area while PO Narayan grabbed § 87(2)(b) left bicep area from the underside, closer to his armpit. Sgt. Berardi stood nearby and watched. When PO Varrone and PO Narayan grabbed § 87(2)(b) arms, the officers positioned his arms so that they were bent at the elbow, § 87(2)(b) arms were up, and his palms were facing away from his body. PO Varrone then let go of § 87(2)(b) right arm and PO Narayan aggressively grabbed § 87(2)(b) right arm by the elbow and raised it even higher than it was. § 87(2)(b) described PO Narayan's aggressive grabbing with more pressure. During this time is when § 87(2)(b) observed PO Narayan push down on his body-worn camera (BWC) and activate it. Only at this point had § 87(2)(b) seen a green light on the officer's BWC.

PO Varrone (**Board Review 3**) testified that he did not use any force on § 87(2)(b). He did move § 87(2)(b) arms to take them out of his pockets. § 87(2)(b) stood with both of his hands in his pocket, with his arms bent at the elbow. PO Varrone, with his hands facing flat, placed his hands between the gap of § 87(2)(b) jacket and § 87(2)(b) arms, and then extended his hands outwards away from § 87(2)(b) body, causing § 87(2)(b) hands to come out of his jacket pocket. § 87(2)(b) hands were then raised in the air, with his arm bent at the elbow and palms facing away from his body.

After approaching § 87(2)(b) PO Narayan (**Board Review 4**) grabbed both of § 87(2)(b) arms by his wrist area, which were positioned above his head. PO Narayan felt § 87(2)(b) arms tense up and believed § 87(2)(b) wanted to move his arms down towards the area of the bulge. § 87(2)(b) was still confrontational and combative while PO Narayan was grabbing his arms. PO Narayan established § 87(2)(b) did not want anyone touching him from his body language, his arms tensing up. PO Narayan did not have to use any force while grabbing § 87(2)(b) arms and he did not recall increasing the pressure exerted on § 87(2)(b) arms at any point. PO Narayan did not recall grabbing § 87(2)(b) arms a second time.

Sgt. Berardi (**Board Review 5**) did not observe either PO Varrone or PO Narayan use physical force against § 87(2)(b). Sgt. Berardi did not recall if PO Narayan had to keep holding § 87(2)(b) arm(s), or if he let them go.

§ 87(2)(b) alleged that PO Varrone grabbed his right bicep and PO Narayan grabbed his left bicep and later his right elbow and raised his arm above his head. PO Varrone stated that he did not use any force on § 87(2)(b) but rather used an outward motion with a flat hand to remove § 87(2)(b) hands from his pocket. PO Narayan stated that he did grab § 87(2)(b) wrists as § 87(2)(b) may have tried moving his arms down toward the bulge. The BWC angles do not capture how PO Varrone removed § 87(2)(b) hands from his pocket. The BWC does show PO Narayan holding one of § 87(2)(b) hands up but does not capture him move his right elbow up or grab his left arm due to the camera angle. § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Anthony Varrone frisked § 87(2)(b)**Allegation (G) Abuse of Authority: Police Officer Anthony Varrone searched § 87(2)(b)**

PO Narayan's BWC (**Board Review 8**) is approximately 1 minute and 27 seconds long and it captures Allegation F. Starting at the 00:54 mark, PO Narayan and PO Varrone stop § 87(2)(b) who has his hands raised. At 00:59, § 87(2)(b) says, "You got probable--you look stupid. Dumb. Dumb. Look at ya'll, both of ya'll. It's a magnifying glass. Stupid. Stupid. Stupid." PO Varrone removed a pink magnifying glass from § 87(2)(b) person. It is not clearly seen where the magnifying glass is taken out of or how it is removed. At 01:06, § 87(2)(b) tells the officers, "Go ahead. Keep going. You want to open by jacket up? Open my jacket up. You got that recorded? You got that recorded? No probable cause. Why are you touching me? Don't touch me, bro. You see this is illegal." As § 87(2)(b) makes these statements, PO Varrone frisks him by patting down his front jacket pockets and his legs.

Sgt. Berardi's BWC (**Board Review 9**) is 1 minute and 18 seconds long. The audio starts at the 59 second mark. § 87(2)(b) tells the officers to "Keep going. You want to open my jacket up? Open my jacket up. You got that recorded? No probable cause. Why are you touching me? Don't touch me bro." Sgt. Berardi tells § 87(2)(b) that everything is being recorded. At the 01:08 mark, PO Varrone puts what appears to be a pink magnifying glass back in § 87(2)(b) front left pocket. To do so, PO Varrone places two fingers from his right hand to open § 87(2)(b) front left jacket pocket and he places the magnifying glass into § 87(2)(b) pocket with his left hand with at least four of his fingers entering the pocket. § 87(2)(b) states that what the officers did was illegal.

§ 87(2)(b) (**Board Review 2**) stated that while PO Narayan held both of § 87(2)(b) arms and without making any statements, PO Varrone frisked § 87(2)(b) by patting down all his pockets, his underarms, and between his legs. § 87(2)(b) told PO Varrone that what he was doing was illegal. PO Varrone then went into § 87(2)(b) pockets and searched them. PO Varrone only took out the pink magnifying glass that was in § 87(2)(b) left jacket pocket. § 87(2)(b) thought that PO Varrone took the magnifying glass out to show the BWC. § 87(2)(b) asked the officers, "Did you get this? Did you get the magnifying glass?" to make sure that the officers had recorded the pink magnifying glass. PO Varrone placed the magnifying glass back in § 87(2)(b) jacket pocket.

PO Varrone (**Board Review 3**) testified that he grabbed the handle of the object, only the end of which was sticking out of § 87(2)(b) pocket and pulled the object out of § 87(2)(b) pocket. The item was a pink magnifying glass. PO Varrone put the object on the hood of a nearby parked car. PO Varrone did not recall if § 87(2)(b) was making any statements at the time, but recalled him saying something along the lines of, "Go ahead, keep going." PO Varrone then frisked the outer most areas of § 87(2)(b) to ensure that he did not have a weapon on him. PO Varrone did not find a weapon. Further, he did not recall if the front of § 87(2)(b) jacket appeared to be weighed down after the magnifying glass was removed.

While PO Narayan (**Board Review 4**) held § 87(2)(b) arms, PO Varrone conducted a frisk of § 87(2)(b) limited to the area of § 87(2)(b) jacket that had the bulge. Upon a closer look, the handle that PO Narayan observed sticking out of § 87(2)(b) pocket was long and had a straight edge. PO Narayan could not recall what shape the handle was specifically, what color it was, or how much of the handle was visible outside of the pocket. PO Narayan stated that firearm handles are not any one shape or size so seeing any handle led the officers to believe it may have been a gun. PO Varrone grabbed the handle sticking out of § 87(2)(b) pocket and removed the object, revealing it to be a magnifying glass. PO Varrone did not need to go into § 87(2)(b) pocket at any point since he removed the magnifying glass by grabbing the exposed handle from outside of § 87(2)(b) pocket. PO Narayan could not recall what happened with the magnifying glass after it was removed, except that it was placed back into § 87(2)(b) pocket without breaking the seal of the pocket by PO Varrone. At no point during the incident did any officer enter § 87(2)(b)

§ 87(2)(b) pocket.

Sgt. Berardi (**Board Review 5**) noted that by the time he approached § 87(2)(b) and the other two officers, PO Varrone was already frisking § 87(2)(b) around the waistband area by § 87(2)(b) jacket, as well as his jacket pocket. Sgt. Berardi did not recall if the object that resembled a firearm handle was still in § 87(2)(b) jacket pocket at this time. Sgt. Berardi did not recall any commands issued during the frisk by the officers, or whether they made any statements to § 87(2)(b) during that time. § 87(2)(b) was “a little combative” after being approached, and called PO Varrone and PO Narayan names, such as “stupid” and “dummy,” after being approached and while being frisked. Sgt. Berardi did not recall any other statements made by § 87(2)(b) while being frisked. The object that resembled a firearm handle was determined to be a “very big” magnifying glass by either PO Varrone or PO Narayan. Sgt. Berardi did not recall what color the magnifying glass was. Sgt. Berardi did not know how the magnifying glass was taken out of § 87(2)(b) jacket pocket. He did not observe PO Varrone search or enter § 87(2)(b) pocket.

“Where a police officer entertains a reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor, the CPL authorizes a forcible stop and detention of that person. A corollary of the statutory right to temporarily detain for questioning is the authority to frisk if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed” People v. DeBour 40 N.Y. 2d 210 (1976) (**Board Review 10**).

§ 87(2)(b) stated that PO Varrone went into his pockets and took out the magnifying glass. PO Varrone and PO Narayan stated that PO Varrone grabbed the portion of the handle that was sticking out of § 87(2)(b) pocket to take the magnifying glass out. It is not clear on the BWC how PO Varrone takes the magnifying glass out of § 87(2)(b) pocket due to the camera angles. PO Narayan’s BWC shows that PO Varrone first took out the magnifying glass and then conducted a frisk. Sgt. Berardi’s BWC shows PO Varrone’s hand enter § 87(2)(b) pocket as he places the magnifying glass back into his pocket. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (H) Abuse of Authority: Police Officer Anthony Varrone failed to explain to § 87(2)(b) the reason for a law enforcement activity.

Allegation (I) Abuse of Authority: Police Officer Neil Narayan failed to explain to § 87(2)(b) the reason for a law enforcement activity.

Allegation (J) Abuse of Authority: Sergeant Daniel Berardi failed to explain to § 87(2)(b) the reason for a law enforcement activity.

PO Varrone’s BWC (**Board Review 7**) is approximately 1 minute and 31 seconds long and captures the entirety of this incident. The audio starts at the 59 second mark. § 87(2)(b) asks PO Varrone if he has probable cause to be touching him. PO Varrone states, “yeah I do.” § 87(2)(b) asks what that probable cause is. PO Varrone then touches § 87(2)(b) left arm and moves it back, which moves his hand out of his pocket. At the 01:07 mark, PO Varrone takes a pink magnifying glass out of § 87(2)(b) jacket pocket. At the 01:13 mark, § 87(2)(b) tells the officers to “Keep going. You want to open my jacket up? Open my jacket up. You got that recorded? No probable cause. Why are you touching me? Don’t touch me bro.” An officer then tells § 87(2)(b) to have a good night. § 87(2)(b) states that what the officers did was illegal.

§ 87(2)(b) (**Board Review 2**) did not state any information regarding PO Varrone, PO Narayan, or Sgt. Berardi stating why they started the encounter.

PO Varrone (**Board Review 3**), PO Narayan (**Board Review 4**), and Sgt. Berardi (**Board Review 5**) did not state in their interviews whether they provided a reason to § 87(2)(b) for stopping him.

The Right to Know Act requires officers to provide an explanation of the reason for the enumerated "law enforcement activity, unless providing such information would impair a criminal investigation." The RTKA defines "law enforcement activity" as Level II questions, pedestrian stops, frisks, most vehicle stops at roadblocks and checkpoints, searches of person, vehicle, or home, and investigatory questioning of victims and witnesses to crimes NYC Administrative Code 14-174 (Board Review 14).

PO Varrone's BWC captures the entirety of the incident and does not capture PO Varrone, PO Narayan, or Sgt. Berardi mentioning to § 87(2)(b) at any point the reason for stopping him. § 87(2)(b)

Allegation (K) Abuse of Authority: Sergeant Daniel Berardi failed to provide § 87(2)(b) with a business card.

Allegation (L) Abuse of Authority: Police Officer Anthony Varrone failed to provide § 87(2)(b) with a business card.

Allegation (M) Abuse of Authority: Police Officer Neil Narayan failed to provide § 87(2)(b) with a business card.

PO Berardi's BWC (**Board Review 9**) is 1 minute and 18 seconds long. At the 01:08 mark, PO Varrone puts what appears to be a pink magnifying glass back in § 87(2)(b) front left pocket. To do so, PO Varrone places two fingers from his right hand to open § 87(2)(b) front left jacket pocket and he places the magnifying glass into § 87(2)(b) pocket with his left hand with at least four of his fingers entering the pocket. § 87(2)(b) states that what the officers did was illegal. At 01:10, Sgt. Berardi asks § 87(2)(b) "Sir, you have anything, information or anything? We offer cards." § 87(2)(b) stated, "No, that's illegal." Sgt. Berardi stated alright and ended the interaction.

§ 87(2)(b) (**Board Review 2**) stated that after he told the officers that he would be reporting this incident, the officers left without any further interaction. He did not state that he received business cards from any officer during this interaction.

PO Varrone (**Board Review 3**) and PO Narayan (**Board Review 4**) stated that as they were finishing the stop, Sgt. Berardi offered § 87(2)(b) a business card by stating something along the lines of, "Sir, you have anything, information, or anything? We offer cards." § 87(2)(b) did not take Sgt. Berardi up on his offer. PO Narayan stated that § 87(2)(b) did not respond to Sgt. Berardi's offer of a business card, neither indicating yes or no. Neither PO Narayan nor PO Varrone offered § 87(2)(b) a business card. PO Narayan did not recall § 87(2)(b) ever asking PO Narayan or PO Varrone for their business cards. Ultimately, none of the officers gave § 87(2)(b) a business card as he did not reply in any way when Sgt. Berardi offered to provide one. PO Narayan stated that, as he understood procedure, one officer on scene successfully offered a business card to § 87(2)(b) § 87(2)(b) heard but did not acknowledge the offer, and though § 87(2)(b) was not given a business card, the officers had fulfilled their obligation as required by protocol with Sgt. Berardi's offer.

Sgt. Berardi (**Board Review 5**) believed that he asked § 87(2)(b) if he wanted his business card and § 87(2)(b) "kept rambling," before telling Sgt. Berardi that he did not want his business card. Sgt. Berardi asked § 87(2)(b) a second time if he wanted his business card and § 87(2)(b) again said that he did not want it. Sgt. Berardi then said, "okay," and turned his BWC off. Sgt. Berardi did not give § 87(2)(b) a business card and did not observe PO Varrone or PO Narayan offer or give § 87(2)(b) a business card during this incident. § 87(2)(b) did not ask any officer for a business card during this incident.

Officers should carry Right to Know business cards and should provide them at the end of a pedestrian stop where an officer has reasonable suspicion of criminality, frisks, and searches of persons, except when a summons is issued, arrest is made, or if there are exigent circumstances present NYC Administrative Code 14-174 (Board Review 14).

§ 87(2)(g)

§ 87(2)(b). Neither PO Varrone nor PO Narayan offered nor provided § 87(2)(b) with their business cards. Sgt. Berardi stated that he asked § 87(2)(b)

§ 87(2)(b) if he wanted his business card and § 87(2)(b) responded that he did not want it. According to Sgt. Berardi's BWC, after § 87(2)(b) told the officers what they did was illegal, Sgt. Berardi asked § 87(2)(b) "Sir, you have anything, information or anything? We offer cards" and § 87(2)(b) responded, "No, that's illegal." It appears § 87(2)(b) was repeating his initial statement of the officers' actions being illegal. As Sgt. Berardi made two statements, it is unclear what § 87(2)(b) was saying "No" to. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 13**).
- Sgt. Berardi has been a member of service for 11 years and has been a subject in nine other CCRB complaints and 25 other allegations, none of which were substantiated. § 87(2)(g)
- PO Varrone has been a member of service for six years and has been a subject in 10 other CCRB complaints and 21 other allegations, none of which were substantiated. § 87(2)(g)
- PO Narayan has been a member of service for three years and has been a subject in six other CCRB complaints and 11 other allegations. More than two allegations of physical force have been pled, one of which was substantiated against PO Narayan.
 - Case number 201909309 involved a substantiated allegation of physical force in which PO Narayan pushed an individual outside of the station house. The Board recommended Command Discipline B. The NYPD imposed no penalty or disciplinary action as the case was a duplicate.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of June 9, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 1**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 11

Investigator:	Tahreem Khan Signature	Inv. Tahreem Khan Print Title & Name	May 26, 2022 Date
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Squad Leader:	Edwin Pena Signature	IM Edwin Pena Print Title & Name	05/26/2022 Date
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Reviewer:	Signature	Print Title & Name	Date
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